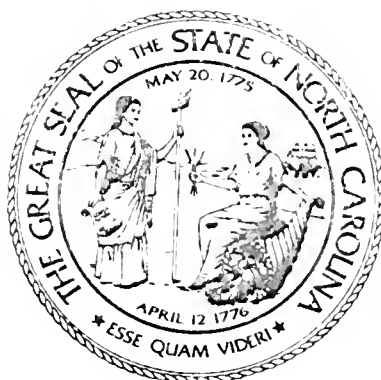


LEGISLATIVE
RESEARCH COMMISSION

COMMISSION
REPORTS

INVESTMENTS BY ELEEMOSYNARY
INSTITUTIONS



REPORT TO THE
1985 GENERAL ASSEMBLY
OF NORTH CAROLINA

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING

RALEIGH 27611




May 17, 1984

TO: Members of the 1985 General Assembly

Due to insufficiency of funds, the Legislative Research Commission referred to the General Statutes Commission the study on the establishment of guidelines for the management and use of investments held by eleemosynary institutions. On May 17, 1984, the General Statutes Commission reported to the Legislative Research Commission on its study of this matter and recommended that the Legislative Research Commission recommend to the 1984 Session of the General Assembly enactment of the Uniform Management Investment Funds Act.

The Legislative Research Commission accepted the report of the General Statutes Commission but transmits the contained draft legislation to the 1985 Session of the General Assembly for its consideration.

Respectfully submitted,


Liston B. Ramsey


W. Craig Laving

Cochairmen
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

House Speaker Liston B. Ramsey,

Cochairman

Representative Chris S. Barker, Jr.

Representative John Trammell Church

Representative Bruce Ethridge

Representative John J. Hunt

Representative Margaret Tennille

Senate President Pro Tempore,

W. Craig Lawing, Cochairman

Senator William N. Martin

Senator Helen Rhine Marvin

Senator William W. Staton

Senator Joseph E. Thomas

Senator Russell Walker

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Department of Justice

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1983
RATIFIED BILL

CHAPTER 905
HOUSE BILL 1142

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION
AND BY THE COMMISSION ON CHILDREN WITH SPECIAL NEEDS AND MAKING
TECHNICAL AMENDMENTS RELATING THERETO.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1983 bill or resolution that originally proposed the study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (23) Investment Guidelines for Eleemosynary
Institutions and Funds (H.J.R. 1423 - Musselwhite),

Sec. 6. For each of the topics the Legislative Research Commission decides to study, the Commission may report its findings, together with any recommended legislation, to the 1984 Session of the General Assembly or to the 1985 General Assembly, or the Commission may make an interim report to the 1984 Session and a final report to the 1985 General Assembly.

Sec. 13. Bills and Resolution References. The listing of the original bill or resolution in this act is for references purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 14. This act is effective upon ratification.
In the General Assembly read three times and ratified,
this the 21st day of July, 1983.

JAMES C. GREEN

James C. Green
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1983

HOUSE JOINT RESOLUTION 1423

Sponsors: Representative Musselwhite.

Referred to: Rules and Regulations of the House.

July 7, 1983

1 A JOINT RESOLUTION TO AUTHORIZE THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY THE ESTABLISHMENT OF GUIDELINES FOR
3 MANAGEMENT AND USE OF INVESTMENTS HELD BY ELEEMOSYNARY
4 INSTITUTIONS AND FUNDS.

5 Whereas, endowments and other funds held by hospitals,
6 colleges, foundations, charities, and other eleemosynary
7 institutions in North Carolina amount to millions of dollars and
8 contribute significantly to the enhancement of health care,
9 disaster relief, artistic endeavor, and education in our State;
10 and

11 Whereas, trustees of eleemosynary institutions wisely
12 seek to make the most effective use possible of endowment and
13 other investment funds; and

14 Whereas, there is presently little legislative or
15 judicial guidance in the field of endowment fund administrat
16 and

17 Whereas, the establishment of a statutory framework
18 grounded upon commonly accepted practices of endowment fund
19 administration would assist trustees who now must take actions
20

1 based on principles which, although sensible and accepted, have
not been addressed by the courts or the General Assembly; and

3 Whereas, the establishment of such a statutory framework
4 would assist charitable institutions by providing them with
5 modern guidelines incorporating sophisticated practices in
6 endowment fund administration; and

7 Whereas, at least 28 states and the District of Columbia
8 have adopted the Uniform Management of Institutional Funds Act
9 (UMIFA) drafted in 1972 by the National Conference of
10 Commissioners on Uniform State Laws to address these issues;
Now, therefore, be it resolved by the House of Representatives,
the Senate concurring:

13 Section 1. The Legislative Research Commission is
14 authorized to study the establishment of guidelines for the
15 management and use of investments held by eleemosynary
16 institutions and funds. The study shall focus on a review of the
17 provisions, operation, and advantages of Uniform Management of
18 Institutional Funds Act (UMIFA).

19 Sec. 2. The Commission is authorized to report its
20 findings and recommendations, together with legislation that
21 would implement its recommendations, to the 1984 Session of the
22 1983 General Assembly.

23 Sec. 3. This resolution is effective upon ratification.

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



September 28, 1983

Mr. Charles H. Livengood, Jr.
Chairman, General Statutes Commission
Duke University Law School
Room 22
Durham, North Carolina 27706

Dear Mr. Livengood:

By Chapter 905 (House Bill 1142) of the 1983 Session Laws the Legislative Research Commission was authorized to study the establishment of guidelines for the management and use of investments held by eleemosynary institutions and funds by focusing on a review of the Uniform Management of Institutional Funds Act drafted in 1972 by the National Conference of Commissioners on Uniform State Laws. The Commission has the discretion to use as guidelines in this study the provisions of House Bill 1423. The Commission has determined that it has insufficient funds to study all of the matters which it is authorized to study.

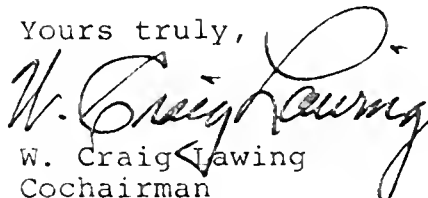
The Commission in reviewing the matter of investment guidelines has noted your Commission's responsibility "to receive and consider proposed changes in the law recommended . . . by the National Conference of Commissioners on Uniform State Laws" (G.S. 164-13(5)).


In view of the constraints on the Legislative Research Commission's budget, the General Statutes Commission's statutory responsibility in this regard, and the importance of this matter to the people of the State, the Legislative

Mr. Charles H. Livengood, Jr.
Page 2
September 28, 1983

Research Commission respectfully requests that the General
Statutes Commission undertake the review of the matter
addressed in House Bill 1423.

Yours truly,


W. Craig Lawing
Cochairman


Liston B. Ramsey
Cochairman

Copy to: Mr. Charles J. Murray
The Honorable Marvin D. Musselwhite, Jr.



STATE OF NORTH CAROLINA

GENERAL STATUTES COMMISSION

P. O. BOX 629

RALEIGH, NORTH CAROLINA 27602

(919) 733-5960

17 May 1984

Senator W. Craig Lawing
Cochairman, Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Lawing:

Pursuant to the request contained in your letter dated September 28, 1983 addressed to Charles H. Livengood, Jr., Chairman, the General Statutes Commission has reviewed the Uniform Management of Institutional Funds Act. During the Commission's consideration of the act it solicited comments from all groups and individuals identified as being interested in the area. Representatives of interested groups submitted written comments and appeared before the Commission. The Commission considered each section on a line by line basis.

Following its consideration of the act and consideration of the comments from interested groups the Commission recommends the enactment of the act in 1984. A copy of the act in bill form is attached along with a memorandum containing comments on the act.

Yours very truly,

Charles J. Murray

Charles J. Murray
Revisor of Statutes
ex officio Secretary

CJM/ejm
Enclosures



STATE OF NORTH CAROLINA

GENERAL STATUTES COMMISSION
P. O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-5960

17 May 1984

The Honorable Liston B. Ramsey
Cochairman, Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Speaker Ramsey:

Pursuant to the request contained in your letter dated September 28, 1983 addressed to Charles H. Livengood, Jr., Chairman, the General Statutes Commission has reviewed the Uniform Management of Institutional Funds Act. During the Commission's consideration of the act it solicited comments from all groups and individuals identified as being interested in the area. Representatives of interested groups submitted written comments and appeared before the Commission. The Commission considered each section on a line by line basis.

Following its consideration of the act and consideration of the comments from interested groups the Commission recommends the enactment of the act in 1984. A copy of the act in bill form is attached along with a memorandum containing comments on the act.

Yours very truly,

Charles J. Murray

Charles J. Murray
Revisor of Statutes
ex officio Secretary

CJM/ejm
losures

First Draft
May 17, 1984
UMIFA; DN 342

ST: Management of Institutional Funds

Sponsors:

A BILL TO BE ENTITLED
AN ACT TO ENACT THE UNIFORM MANAGEMENT
OF INSTITUTIONAL FUNDS ACT AS RECOMMENDED
BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are amended by adding a new Chapter, 36B, to read as follows:

"Chapter 36B.

"Uniform Management of Institutional Funds Act.

"§ 36B-1. Definitions.--As used in this Chapter, the following terms have the meanings specified:

(1) 'institution' means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes;

(2) 'institutional fund' means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (i) a fund held for an institution by a trustee that is not an institution or (ii) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon

violation or failure of the purposes of the fund or (iii) funds other than endowment funds held by a governmental organization;

(3) 'endowment fund' means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(4) 'governing board' means the body responsible for the management of an institution or of an institutional fund;

(5) 'historic dollar value' means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(6) 'gift instrument' means a will, deed, trust, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

"§ 36B-2. Appropriation of appreciation.--The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by G.S. 36B-6. This section

does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

"§36B-3. Rule of Construction.--G.S. 36B-2 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only 'income', 'interest', 'dividends', or 'rents, issues, or profits', or 'to preserve the principal intact', or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this act.

"§ 36B-4. Investment authority.--In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may, subject to G.S. 36B-6:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or

individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are comingled and investment determinations are made by persons other than the governing board.

"§ 36B-5. Delegation of investment management.--Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds, (2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act, and (3) authorize the payment of compensation for investment advisory or management services.

"§ 36B-6. Standard of conduct.--In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members

of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

"§ 36B-7. Release of restrictions on use or investment.--(a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the Superior Court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The Attorney General shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of G.S. 36A-53 or of the doctrine of cy pres.

"§ 36B-8. Conflict with other law.--To the extent that the provisions of this Chapter are inconsistent with the provisions of either Chapter 36A or Chapter 55A, the provisions of this Chapter shall control. The provisions of this Chapter shall not apply to any constituent institution of the University of North Carolina.

"§ 36B-9. Uniformity of application and construction.--This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

"§ 36B-10. Short title.--This act may be cited as the 'Uniform Management of Institutional Funds Act'."

Sec. 2. The Revisor of Statutes shall cause the commentary to each section of Chapter 36B to be printed in the General Statutes. The commentary shall contain the comments of the National Conference of Commissioners on Uniform State Laws, the comments of the General Statutes Commission, and shall reflect amendments made during legislative consideration of this act.

Sec. 3. This act is effective upon ratification.



STATE OF NORTH CAROLINA

GENERAL STATUTES COMMISSION

P. O. BOX 629

RALEIGH, NORTH CAROLINA 27602

(419) 733-5960

17 May 1984

MEMORANDUM

FROM: The General Statutes Commission

RE: The Uniform Management of Institutional Funds Act

GENERAL COMMENTS

The Uniform Management of Institutional Funds Act was adopted by the National Conference of Commissioners on Uniform State Laws at its eighty-first annual conference in 1972 and has been enacted by twenty-six states and the District of Columbia. As stated in the official prefatory note of the drafters the act provides:

1. A standard of prudent use of appreciation in invested funds.
2. Specific investment authority.
3. Authority to delegate investment decisions.
4. A standard of business care and prudence to guide governing boards in the exercise of their duties under the act.
5. A method of releasing restrictions on use of funds or selection of investments by donor acquiescence or court action.

The Uniform Commissioners have prepared comments for each section of the act and those comments will be provided upon request. The following specific comments explain changes proposed by the General Statutes Commission.

SPECIFIC COMMENTS

G.S. 36B-1(2)(iii). The Commission added this provision to limit the application of the act to government funds that are endowment funds and thus eliminate from the scope of the act any regulation of the management or investment of funds that are not derived from a charitable gift that is not completely expendable.

G.S. 36B-4. The Commission inserted the words "subject to the provisions of G.S. 36B-6" at the end of the introductory paragraph. The addition was made to eliminate any question that the section might be construed to abrogate liability.

G.S. 36B-8. The Commission added this section to establish that the new act will control in situations where either Chapter 36A Trusts and Trustees or Chapter 55A Nonprofit Corporation Act would overlap with its provisions. The section also provides that the provisions of the new act do not apply to the University of North Carolina because G.S. 116-36 governs the University.

